

KATHLEEN WALLMAN
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December 16, 2003

Re: 03-124 on behalf of Pegasus Communications

The Honorable Michael Powell, Chairman
The Honorable Kathleen Abernathy
The Honorable Michael Copps
The Honorable Kevin Martin
The Honorable Jonathan Adelstein
Kenneth Ferree, Chief, Media Bureau
Barbara Esbin, Associate Chief, Media Bureau

Dear Mr. Chairman, Commissioners and Chiefs:

We understand that the deliberative process on the proposed News/Hughes merger is moving quickly. We request adoption of two conditions to protect competition and consumers:

1. **The Commission should explicitly state in its order that its conditioned approval of the merger in no way preempts antitrust remedies against actionable behavior post-merger.** Absent such a statement, the merger parties may be able to avail themselves of a defense, if sued, that government approvals of the transaction protect post-merger behavior. With such a statement, adversely affected parties retain the same judicial remedies that are available to them now. The proposed condition narrowly addresses the effects of the merger itself by preserving the status quo ante. Even if the merger parties view the availability of antitrust remedies against them after the merger to be self-evident, adding this declaration to the order inflicts no harm.
2. **The Commission should require that the local into local commitment undertaken by the parties be implemented on a nondiscriminatory basis.** Absent such a requirement, DirecTV will remain free to skip over markets served by its distributors, such as Pegasus and the NRTC members while implementing local into local in smaller markets that DirecTV serves directly. This self-preference harms distributors' ability to compete with cable and other MVPDs in rural markets where they are the exclusive provider of DirecTV, and deprives rural customers of local channels on the satellite platform. With such a requirement, local into local will be implemented in an orderly and nondiscriminatory fashion by descending market size.

Thank you for your consideration, and for your consideration of other conditions we proposed in the record, even though these latter proposals, we have come to understand,

are not ones that a majority of the Commission is prepared to support. Please call me at 202-641-5387 if you have questions or wish to discuss this proposal further.

Very truly yours,

//signed//

Kathleen Wallman

Copies to Jennifer Manner, Jordan Goldstein, Jon Cody, Johanna Mikes, Catherine Bohigian